V Paul Raj Chelladurai v Jabatan Telekom Malaysia Bhd & Ors

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO W-01-6 OF 1994
SITI NORMA YAAKOB, MAHADEV SHANKAR AND DENIS ONG JJCA
3 APRIL 1997

Administrative Law *— Rights and liabilities of public servants — Public servant — Dismissal from service — No oral inquiry held — Whether dismissal letter showed that extraneous matters were taken into consideration — Whether bare allegation that irrelevant matters were taken into account were sufficient to quash decision of disciplinary board*

Administrative Law *— Remedies — Certiorari — Application to quash decision of disciplinary board — No complaint that the decision-making process of disciplinary board tainted — Proper time for applying for certiorari — Whether after having resorted to the appeal procedure, applicant could also apply for certiorari — Rules of the High Court 1980 O 53 r 1A*

Public Servants *— Dismissal — Principles determining dismissal of public servant — No oral inquiry held — Whether bare allegation that irrelevant matters were taken into account were sufficient to quash decision of disciplinary board — Whether action was misconceived as there was no entity referred to as the respondent in the action — Telecommunication Services (Successor Company) Act 1985*

The appellant joined Jabatan Telekom ('the respondent') in 1955 as an unskilled labourer. By a letter dated 30 August 1986, issued by the Chairman of the Disciplinary Board, the appellant was duly informed that he was charged with an offence allegedly committed on 19 January 1984 and was asked to show cause why he should not be dismissed from service. The appellant responded on 17 September 1986 putting in clear terms events that transpired on the said day and to emphasize the denials and the appellant's clean service record. There was no specific request for an official inquiry. A letter of dismissal followed on 19 November 1986 ('the dismissal letter') which also stated that if the appellant wished to appeal, he was required to do so through his departmental head within 14 days of the receipt of the dismissal notice. On the date not made known to the court, the appellant sent an undated appeal letter to the appeal board which was received by the appeal board on 5 September 1992. On 26 February 1993, the appeal board wrote to the appellant dismissing his appeal.

On 23 March 1993, the appellant's solicitors filed a notice of motion ex parte for leave to apply for certiorari to quash the decision of 'Jabatan Telekom Malaysia Bhd or the Public Services Commission' and leave was granted whereby that substantive application was then filed. The only ground argued by counsel for the appellant in the court below was that no oral inquiry had been held. The learned judge summarily dismissed the application. The appellant appealed.

A At the appeal, the appellant's counsel having become aware of the case of *Raja Abdul Malek Muzaffar Shah bin Raja Shahruzzaman v Setiausaha Suruhanjaya Pasukan Polis & Ors* [1995] 1 MLJ 308 based his entire submission on that decision in that since the phrase 'serta lain-lain maklumat' had been used in the appellant's dismissal letter, the appeal should be allowed. Counsel for the respondent submitted that as the point was not raised in the court below, it should not be entertained.

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Held, dismissing the appeal:

(1) In the matter before the court, there was no trial. Everything C went on affidavit evidence. The words in the dismissal letter were not made the subject of any complaint. The bare allegation that irrelevant matters were taken into account were specifically rebutted by the Chairman of the Disciplinary Board and the author of the dismissal letter. Thereafter, the issue was not D ventilated at all in the affidavits, and the submission of the respondent's counsel in the court below that no extraneous matters were considered was not challenged by the appellant's counsel in his reply. The appellant's contention that the phrase 'serta lain-lain maklumat' showed that the respondents had taken extraneous material into consideration was therefore devoid of E merit (see p 773B–C); *Raja Abdul Malek Muzaffar Shah bin Raja Shahruzzaman v Setiausaha Suruhanjaya Pasukan Polis & Ors* [1995] 1 MLJ 308 distinguished.

(2) The subject matter of the appellant's grievance was his dismissal on 19 November 1996. To be granted certiorari, he had to show F that there was a serious defect in the decision-making process of the disciplinary board. The proper time for applying for certiorari was within six weeks of the decision to dismiss (see O 53 r 1A of the Rules of the High Court 1980). The application in this case was more than six years late (see p 773D).

G (3) Having resorted to the appeal procedure, it was not open to the appellant to come for certiorari also. There was no complaint that the decision-making process of the appeal board was in any way tainted. In fact, nowhere in the appeal letter was there any allegation that extraneous matters were taken into account by the disciplinary board. Indeed, this letter referred to an explanatory H letter written by the appellant dated 1 February 1985, which was never produced to the court and which proved that the departmental inquiries had preceded the disciplinary proceedings (see p 773E–F).

(4) The action was totally misconceived because there was no such I entity called 'Jabatan Telekom Malaysia Bhd'. The successor company to Jabatan Telekom Malaysia was correctly 'Sykt Telekom Malaysia Bhd'. The successor company was not a corporation but a public company which had nothing to do with the dismissal in 1986. Under the Telecommunication Services (Successor Company) Act 1985 ('Act 322'), the transfer date

was 1 January 1987. As the earlier dismissal letter was dated 19 November 1986, and on the assumption that the appellant received this letter as late as 30 November 1986, he had to appeal within 14 days of the date of receipt of this letter. Section 9 of Act 322 required the appellant to exercise an option on or before 31 December 1986 in order to show that he had been accepted as an employee of Sykt Telekom Malaysia Bhd. There was no evidence whatsoever of any such option having been extended to or exercised by the appellant (see pp 773H–I and 774A).

[Bahasa Malaysia summary

Perayu mula bekerja dengan Jabatan Telekom ('penentang') dalam tahun 1955 sebagai seorang buruh kasar. Melalui sepucuk surat bertarikh 30 Ogos 1986, yang dikeluarkan oleh pengerusi lembaga tatatertib, perayu diberitahu bahawa dia dipertuduhkan dengan satu kesalahan yang dikatakan dilakukan pada 19 Januari 1984 dan diminta menunjukkan sebab mengapa dia tidak patut dipecat dari perkhidmatannya. Perayu membalas pada 17 September 1986 dengan menyatakan dalam terma jelas peristiwa yang berlaku pada hari tersebut dan untuk menitikberatkan penafian dan rekod perkhidmatan perayu yang bersih. Tiada permintaan yang khas untuk satu siasatan rasmi. Sepucuk surat pemecatan menyusul pada 19 November 1986 ('surat pemecatan') yang juga menyatakan bahawa sekiranya perayu ingin merayu, dia dikehendaki berbuat demikian melalui ketua jabatannya dalam tempoh 14 hari daripada penerimaan notis pemecatan. Pada tarikh yang tidak diumumkan kepada mahkamah, perayu telah menghantar sepucuk surat rayuan yang tidak bertarikh kepada lembaga rayuan yang diterima oleh lembaga tersebut pada 5 September 1992. Pada 26 Februari 1993, lembaga rayuan menulis kepada perayu dan menolak rayuannya.

Pada 23 Mac 1993, peguam cara perayu memfailkan notis usul secara ex parte untuk kebenaran memohon certiorari bagi membatalkan keputusan 'Jabatan Telekom Malaysia Bhd atau Suruhanjaya Perkhidmatan Awam' dan kebenaran diberikan yang mana permohonan substantif itu kemudiannya difailkan. Satu-satunya alasan yang dihujahkan oleh peguam perayu di mahkamah bawah adalah bahawa tiada siasatan lisan telah dilangsungkan. Hakim yang arif terus menolak permohonan itu secara terus. Perayu membuat rayuan.

Di rayuan, peguam perayu, setelah menyedari kes *Raja Abdul Malek Muzaffar Shah bin Raja Shahruzzaman v Setiausaha Suruhanjaya Pasukan Polis & Ors* [1995] 1 MLJ 308, mendasarkan hujah keseluruhannya atas keputusan itu bahawa oleh kerana ungkapan 'serta lain-lain maklumat' telah digunakan dalam surat pemecatan perayu, rayuan patut dibenarkan. Peguam penentang menghujahkan bahawa oleh kerana hujah itu tidak dibangkitkan di mahkamah bawah, ia tidak patut dilayan.

Diputuskan, menolak rayuan:

(1) Dalam perkara di hadapan mahkamah, tidak terdapat perbicaraan. Semuanya diteruskan atas keterangan afidavit. Perkataan-

perkataan dalam surat pemecatan tidak dijadikan subjek apa-apa aduan. Pengataan kosong bahawa perkara yang tidak relevan telah diambil kira dipatahkan secara spesifik oleh pengerusi lembaga tatatertib dan penulis surat pemecatan. Selepas itu, isu tersebut tidak diutarakan sama sekali dalam afidavit-afidavit, dan hujah peguam penentang di mahkamah bawah bahawa tiada perkara yang tidak berkaitan dipertimbangkan tidak dicabar oleh peguam perayu dalam jawapan beliau. Dengan itu, hujah perayu bahawa ungkapan 'serta lain-lain maklumat' menunjukkan bahawa penentang telah mempertimbangkan material yang tidak berkaitan adalah tanpa merit (lihat ms 773B–C); *Raja Abdul Malek Muzaffar Shah bin Raja Shahruzzaman v Setiausaha Suruhanjaya Pasukan Polis & Ors* [1995] 1 MLJ 308 dibeza.

(2) Perkara subjek kilanan perayu adalah pemecatannya pada 19 November 1996. Bagi mendapatkan certiorari, dia harus menunjukkan bahawa terdapat kecacatan yang serius dalam proses membuat keputusan lembaga tatatertib. Masa yang sesuai dalam memohon certiorari adalah dalam tempoh enam minggu dari keputusan untuk menolak (lihat A 53 k 1A Kaedah-Kaedah Mahkamah Tinggi 1980). Kelewatan permohonan dalam kes ini melebihi enam tahun (lihat ms 773D).

(3) Oleh kerana perayu telah memilih untuk menggunakan prosedur rayuan, ia tidak terbuka kepada perayu untuk meminta certiorari juga. Tiada apa-apa aduan bahawa proses membuat keputusan lembaga rayuan adalah tercemar dalam apa cara pun. Pada hakikatnya, tiada apa-apa pengataan dalam surat rayuan bahawa perkara yang tidak berkaitan telah diambil kira oleh lembaga tatatertib. Malah, surat ini merujuk kepada suatu surat penjelasan yang ditulis oleh perayu bertarikh 1 Februari 1985, yang tidak pernah dikemukakan kepada mahkamah dan yang mana membuktikan bahawa siasatan jabatan telah mendahului prosiding tatatertib (lihat ms 773E–F).

(4) Tindakan telah salah tanggap pada keseluruhan kerana tiada entiti yang digelar 'Jabatan Telekom Malaysia Bhd'. Syarikat pengganti kepada Jabatan Telekom Malaysia dengan betulnya adalah 'Sykt Telekom Malaysia Bhd'. Syarikat pengganti tidak merupakan sebuah pertubuhan tetapi sebuah syarikat awam yang tiada apa-apa kaitan dengan pemecatan dalam tahun 1986. Di bawah Akta Perkhidmatan Telekomunikasi (Syarikat Pengganti) 1985 ('Akta 322'), tarikh pemindahan adalah 1 Januari 1987. Oleh kerana surat pemecatan yang lebih awal adalah bertarikh 19 November 1986, dan pada anggapan bahawa perayu telah menerima surat ini selewat-lewatnya pada 30 November 1986, dia harus merayu dalam tempoh 14 hari dari tarikh penerimaan surat ini. Seksyen 9 Akta 322 menghendaki perayu melaksanakan satu opsyen pada atau sebelum 31 Disember 1986 bagi menunjukkan bahawa dia telah diterima sebagai seorang pekerja Sykt Telekom Malaysia Bhd. Tiada apa-apa keterangan bahawa opsyen sedemikian telah dilanjutkan kepada atau dilaksanakan oleh perayu (lihat ms 773H–I dan 774A).]

Notes

For cases on certiorari, see 1 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 96–227.

For cases on rights and liabilities of public servants, see 1 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 404–452.

For cases on dismissal of public servants, see 10 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1525–1563.

Cases referred to

Raja Abdul Malek Muzaffar Shah bin Raja Shahruzzaman v Setiausaha Suruhanjaya Pasukan Polis & Ors [1995] 1 MLJ 308 (distd)

Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidikan & Anor [1996] 1 MLJ 261 (refd)

Legislation referred to

Rules of High Court 1980 O 53 rr 1(2), 1A

Telecommunication Services (Successor Company) Act 1985 s 9

Appeal from: Originating Motion No R2–25–46 of 1993 (High Court, Kuala Lumpur)

Saran Singh (*Saran Singh & Co*) for the appellant.

Al-Baishah bte Hj Abdul Manan (Senior Federal Counsel) for the respondents.

Cur Adv Vult

Mahadev Shankar JCA (delivering the judgment of the court): This is an appeal against the refusal of the learned High Court judge to quash a decision relating to the dismissal of the appellant from Jabatan Telekom.

The appellant joined Jabatan Telekom on 24 April 1955 as an unskilled labourer. In the course of his career, he received salary increments and promotions in rank. On 20 May 1985, he received a notice from the Director of Telecoms that he was due to be retired on 31 December 1986 because he would have reached 55 years of age, and should therefore make ready to surrender the official quarters which he was occupying.

By a letter dated 30 August 1986 issued by the Chairman of the Disciplinary Board, the appellant was duly informed that he was charged with an offence allegedly committed on 19 January 1984, and was asked to show cause why he should not be dismissed from service. The offence alleged was that on the day in question, the appellant together with his superior and technician — Mohd Nordin bin Abdul Malek ('Mohd Nordin') and Yahya bin Omar ('Yahya') — whilst installing a telephone at No 4, Jalan Theatre, Ipoh had received an 'ang pow' of RM20 from the occupant and thereupon insisted on being paid another RM10. It was alleged he acted dishonestly and irresponsibly as a public officer and conducted himself in a manner likely to cause a reasonable suspicion that he had used his public position for his advantage and thereby made himself liable to dismissal (see GO 4(2)(c)(ii), (f) and (g) of PU (A) 203/80).

A The appellant responded on 17 September 1986 with a four-page letter written in long hand. In short, he stated therein that:

(a) the accusation was false;

(b) the occupant had requested them for an illegal extension to the telephone to be installed which Mohd Nordin refused;

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(c) he, the appellant, had explained to the occupant why the extension was illegal;

(d) the occupant had then proceeded to put several currency notes into Mohd Nordin's pocket which Mohd Nordin rejected, scolded the occupant and told the appellant not to entertain the occupant's request and to get on with the job at hand;

C

(e) after this was completed, the occupant handed out three 'ang pows' to Mohd Nordin which the latter placed on the table. The occupant then took up the 'ang pows' and offered one 'ang pow' each to the appellant and Yahya which they also refused and left; and

D (f) the occupant was making a false accusation because —

(i) he was angry for being scolded by Mohd Nordin for making an illegitimate demand;

(ii) when the occupant put the 'ang pows' into the pockets of the appellant and Yahya, they returned the same without any knowledge of its contents; so it was unjust to say that they asked for an additional RM10; and

E

(iii) if the accusation were true, why had the occupant not lodged an official report, and why was there a delay.

F The rest of the letter went to emphasize the denials and the appellant's clean service record. There was no specific request for an official inquiry.

A letter of dismissal followed on 19 November 1986. It reads as follows:

> Adalah dimaklumkan bahawa lembaga tatatertib di dalam mesyuaratnya
> G pada 24 Oktober 1986, setelah menimbangkan dengan teliti pertuduhan ke atas tuan dan jawapan yang diberi oleh tuan dan lain-lain maklumat yang berkaitan, memutuskan bahawa tuan dikenakan hukuman BUANG KERJA mulai dari tarikh tuan menerima surat ini.
>
> Peraturan 12(1) dan 13(1) Peraturan-peraturan Lembaga Tatatertib Perkhidmatan Awam 1972 (PU (A)48/72) menetapkan jika tuan tidak
> H berpuas hati atas keputusan lembaga tatatertib berkenaan, tuan bolehlah merayu terhadap keputusan ini kepada Lembaga Rayuan Tatatertib, Suruhanjaya Perkhidmatan Awam Malaysia, melalui ketua jabatan tuan di dalam tempoh 14 hari mulai dari tarikh penerimaan keputusan lembaga tatatertib ini.

I By letter dated 9 January 1987, the pensions department notified the second respondent that in view of the dismissal, the pension benefits of the appellant had been revoked. The appellant got a copy of this letter.

As earlier stated, if the appellant wished to appeal, he was required to do so through his departmental head within 14 days of the receipt of the dismissal notice.

On the date not made known to us, the appellant sent an undated appeal letter to the disciplinary appeal board ('the appeal board') through his departmental head. This letter was received by the appeal board on 5 September 1992 from the Ministry of Energy, Telecommunications and Posts. The appeal letter was not sent to this address and there is no explanation whatsoever as to who sent it there and when.

On 26 February 1993, the appeal board wrote to the appellant through the Secretary General of the Ministry that his appeal had been dismissed.

On 23 March 1993, the appellant's solicitors filed a notice of motion ex parte for leave to apply for certiorari to quash the decision of 'Jabatan Telekom Malaysia Bhd, or the Public Services Commission' contained in the letter dated 26 February 1993. The application was supported by the required statement under O 53 r 1(2) of the Rules of the High Court 1980 ('the RHC') and an affidavit ('the affidavit').

The ex parte application was opposed on 26 August 1993 on the ground it was two days out of time. Leave was granted nevertheless. The substantive application proper was then filed and the affidavit was again used in support of the motion.

In the affidavit, at para 12, the appellant deposed that:

> 12 Saya mengatakan bahawa penamatan kerja tersebut adalah salah atas alasan-alasan berikut:
>
> (a) Saya tidak diberitahu berkenaan tuduhan terhadap saya.
> (b) Penyelia saya tidak membuat aduan terhadap kerja saya.
> (c) Penentang pertama telah gagal memberitahu saya untuk menghadiri mesyuarat atau siasatan sebelum keputusan dibuat.
> (d) Penentang-penentang telah mungkir kaedah-kaedah keadilan.
> (e) Tindakan penentang-penentang tidak mengikut peruntukan tertentu.
> (f) Saya tidak diberi peluang untuk membela diri.
> (g) Penentang-penentang telah mengambil bukti-bukti yang tidak relevan.
> (h) Penentang-penentang telah gagal untuk menimbang fakta-fakta yang relevan.
> (i) Penentang-penentang tidak memberi saya amaran sebelum dibuang kerja.

Encik Ong Tee John, who chaired the disciplinary board, personally affirmed the affidavit in reply. As to para 12 of the appellant's affidavit, he said this:

> 5 Saya memohon kebenaran untuk merujuk perenggan 12(a) afidavit pemohon. Pemohon sebenarnya telah diberitahu mengenai tindakan terhadapnya melalui surat pertuduhan bertarikh 30 Ogos 1985 yang telah dihantar/dikemukakan kepada pemohon. Sesalinan surat pertuduhan tersebut dikemukakan di sini dan ditanda sebagai eks OTJ-1.
>
> 6 Merujuk kepada perenggan 12(c), (d), (e), (f), (g) dan (h) afidavit pemohon, saya menegaskan selanjutnya bahawa melalui eks OTJ-1, pemohon telah diberi peluang untuk mengemukakan sebarang

representasi secara bertulis. Sehubungan dengan ini, pemohon telah mengemukakan representasi beliau melalui suratnya bertarikh 17 September 1985. Sesalinan surat tersebut dikemukakan di sini dan ditanda sebagai eks OTJ-2.

7 Saya memohon kebenaran untuk merujuk perenggan 12(e) dan (i) afidavit pemohon. Saya menegaskan bahawa pihak Lembaga Tatatertib, Jabatan Telekom Malaysia, Kawasan Utara telah pun memberi amaran melalui surat pertuduhan bertarikh 30 Ogos 1985 (eks OTJ-1) bahawa keputusan telah dibuat untuk mengambil tindakan tatatertib terhadap beliau di bawah Peraturan 26, Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D') 1980 dengan tujuan BUANG KERJA.

8 Perenggan 13 afidavit pemohon adalah dinafikan. Selanjutnya saya menegaskan bahawa pertuduhan-pertuduhan berkaitan telah dibuktikan terhadap pemohon.

9 Oleh yang demikian, saya telah menasihati dan sesungguhnya percaya bahawa tuntutan pemohon di dalam kes ini adalah tidak berasas dan sepatutnya ditolak dengan kos.

The secretary of the Public Services Commission also filed an affidavit testifying to the receipt of the undated appeal letter earlier referred to.

It thus became patently obvious that the appellant's grounds (a), (f) and (i) were demonstrably false to the knowledge of the appellant. Ground (b) need not delay us here. Ground (c) is correct in so far as it goes because no inquiry was held, but as pointed out earlier, the appellant did not ask for one. As to grounds (d), (e), (g) and (h), the appellant gave no particulars whatsoever. These were sweeping allegations and bearing in mind the demonstrable falsity of grounds (a), (f) and (i), it is a reasonable inference that all the allegations were made by the appellant and his legal advisors in the spirit that if enough buckshot was fired, some of the pellets might stick!

The appellant filed a final reply affidavit on 15 June 1996. Notwithstanding the benefit of legal advice, the only point raised was that no inquiry had been held and no opportunity had been given to cross-examine the appellant's accusers. The shocking delay of over six years for the undated appeal to be disposed of was not touched upon. In view of the secretary's affidavit, we think it was incumbent upon the appellant to say when and to whom he had sent the appeal letter because until rebutted, the only inference is that the appellant had sent his appeal letter not within 14 days as required but years later.

The matter then came on for hearing on 13 July 1994. The same counsel who appeared in the court below also appeared before us. The only ground urged by the appellant's counsel in the court below to vitiate the dismissal was that no oral inquiry had been held to enable the appellant to cross-examine his accusers and the relevant witnesses and that it would have been impossible for the disciplinary board to make findings on credibility based on the written material.

The respondents' counsel submitted that the disciplinary board was not obliged to hold an inquiry and cited the relevant cases. She further

submitted that the appellant 'had not proved that irrelevant facts had been taken into consideration'. A

The appellant's counsel's response was that purely based on the letter, the tribunal could not come to such a finding.

The learned judge summarily dismissed the application. The appellant then applied for leave to appeal which was immediately granted the same day, ie 13 July 1994. B

The decision of the court in *Raja Abdul Malek Muzaffar Shah bin Raja Shahruzzaman v Setiausaha Suruhanjaya Pasukan Polis & Ors* [1995] 1 MLJ 308 ('the decision') was first published on 30 January 1995. In the dismissal letter, there it was stated that in addition to the plaintiff's explanation, the Police Service Commission had also taken into consideration 'serta lain-lain maklumat' in arriving at its decision to dismiss. This court held that the proper construction to be placed on the dismissal letter was that it had taken extraneous material into consideration which the plaintiff had no opportunity to rebut. We therefore vitiated the dismissal, in all the circumstances of that case. C D

The decision was not available when this matter was argued in the court below. But by the time this appeal came on for hearing on 29 January 1997, the appellant's counsel — having become aware of it — based his entire submission on the decision. He contended that because the same phrase 'serta lain-lain maklumat' had been used in the appellant's dismissal letter, we should allow his appeal and nullify his dismissal. E

Counsel for the respondents submitted that as the point was not raised by the appellant in the court below, we should not entertain it. She could not take the matter much further except to say that the judgment in the court below was confined to the only point raised there, ie whether an inquiry was compulsory. The appellant's counsel response to this was to rely on the only other authority in his bundle, ie *Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidikan & Anor* [1996] 1 MLJ 261. Only the headnote was supplied from which it appears that by a majority of 2:1, the court held that although ordinarily an appellant would not be permitted to argue a point not raised in the court below, it all depended upon the justice of a case. F G

Neither counsel could shed any light on why it took over six years to deal with the appeal, or even what happened to the other two members of the group who were involved in the original exercise.

The appellant's counsel had strenuously contended that the said decision was on all fours, and we needed time to consider if he was right. H

Having done so, we are unanimously of the opinion that the point was devoid of merit.

In the decision, there was a trial in which the plaintiff had not only pleaded the point, but had also given *viva voce* evidence that the proper construction to be placed on the offending words was that prejudicial and extraneous material had been taken into consideration. Instead of rebutting this accusation by calling evidence from the author of the letters, the I

A defence counsel elected to submit no case and to contend that the words were mere surplusage. Such conduct is tantamount to an admission that the plaintiff's version should be accepted.

In the matter before us, there was no trial. Everything went on affidavit evidence. The words in the letter here were not made the subject B of any specific complaint. More to the point, the bare allegation that irrelevant matters were taken into account was specifically rebutted by the Chairman of the Disciplinary Board and the author of the dismissal letter. Thereafter, the issue was not ventilated at all in the affidavits, and the submission of the respondents' counsel in the court below that no extraneous matters were considered was not challenged by the appellant's counsel in C his reply. The decision is clearly distinguishable on the facts.

There are other flaws in the appellant's case which nobody seems to have noticed. They are both glaring and fatal to the application.

The subject matter of the appellant's grievance is his dismissal on 19 November 1986. To be granted certiorari, he had to show that there D was a serious defect in the decision-making process of the disciplinary board. The proper time for applying for certiorari was within six weeks of the decision to dismiss (see O 53 r 1A of the RHC). The application here was more than six years too late.

Secondly, having unsuccessfully resorted to the appeal procedure, it E was not open to him to come for certiorari also. There is no complaint here that the decision-making process of the appeal board was in any way tainted. In fact, nowhere in the appeal letter is there any allegation that extraneous matters were taken into account by the disciplinary board. Indeed, this letter refers to an explanatory letter written by the appellant dated 1 February 1985, which was never produced to us and which proves F that departmental inquiries had preceded the disciplinary proceedings.

Thirdly, the notice of motion for leave and the substantive motion both state the order sought is:

> ... untuk tujuan membatalkan keputusan Jabatan Telekom Malaysia Bhd G atau Suruhanjaya Perkhidmatan Awam Malaysia dalam surat yang bertarikh 26 Februari 1993 [ie in order to quash the decision of Jabatan Telekom Malaysia Bhd or the Public Services Commission Malaysia in its letter dated 26 February 1993].

This prayer was totally misconceived because there is no such entity called 'Jabatan Telekom Malaysia Bhd'. The successor company to Jabatan H Telekom Malaysia is correctly 'Sykt Telekom Malaysia Bhd'. The successor company is not a corporation but a public company which had nothing to do with the dismissal in 1986. Under the Telecommunication Services (Successor Company) Act 1985 ('Act 322'), the transfer date was 1 January 1987. As stated earlier, the dismissal letter was dated 19 November 1986 I and on the assumption that the appellant received this letter as late as 30 November 1986, he had to appeal within 14 days of the date of the receipt of this letter. Section 9 of Act 322 aforesaid required the appellant to exercise an option on or before 31 December 1986 in order to show that he had been accepted as an employee of Sykt Telekom Malaysia Bhd.

There is no evidence whatsoever of any such option having been extended to or exercised by the appellant. In any case, had the decision of the appeal board been quashed as prayed for by the appellant, the dismissal order by the disciplinary board would have been left intact.

The failure of counsel for both parties to address their minds to these obvious defects does not speak well of them. The courts are surely entitled to more meaningful assistance from its officers in the disposal of its business.

This appeal is dismissed with costs. The deposit shall be paid to the respondents towards taxed costs.

Appeal dismissed.

Reported by Eugene Lee Hong Whye